

# Rockville City Police Department

## GENERAL ORDER



<b>Subject</b> <b>EYEWITNESS IDENTIFICATION</b>		<b>Procedure</b> <b>G.O. # 4-45</b>
<b>Authorizing Signature</b>	<b>Effective</b> <b>05-15-2011</b>	<b>Total Pages</b> <b>13</b>

### I. POLICY

It is the policy of the Rockville City Police Department to conduct fair and impartial one-on-one, "mug" book and photo lineup eyewitness identifications. The Department strives to ensure that eyewitness identifications are performed as outlined in Department of Justice (DOJ) guidelines.

### II. COMPLIANCE WITH STATE LAW

Maryland Law (HB103) requires all law enforcement agencies to adopt written policies pertaining to eyewitness identification and file these policies with the Maryland State Police. These policies must be available for public inspection. Further, the policies must comply with the United States Department of Justice (DOJ) standards on obtaining accurate eyewitness identification.

### III. PUBLIC SAFETY COMMUNICATIONS DISPATCHERS RESPONSIBILITIES

- A. The information obtained from a witness is critical to the safety of those involved in an incident and may be important to the investigation. The manner in which facts are elicited from a caller can influence the accuracy of the information obtained.
- B. As the initial point of contact for the witness/victim, the Public Safety Communications Dispatchers must obtain and disseminate, in a non-suggestive manner, complete and accurate information from the caller. This information can include the description/identity of the suspect.
- C. During a call for service the Public Safety Communications Dispatchers, after obtaining preliminary information and dispatching an officer should:
  - 1. Assure the caller the police are on the way.
  - 2. When applicable, inquire about weapons.
  - 3. Ask open-ended questions (e.g., "What can you tell me about the car?"); augment with closed-ended questions (e.g., "What color was the car?").
  - 4. Avoid asking suggestive or leading questions (e.g., "Was the car red?").
  - 5. Ask if anything else should be known about the incident.

6. Transmit information to responding officer(s).

7. Update officer(s) as more information comes in.

IV. PRELIMINARY INVESTIGATING OFFICER

A. The preliminary investigation at the scene forms a sound basis for the accurate collection of information and evidence during the follow-up investigation.

B. Preservation and documentation of the scene, including information from witnesses and physical evidence, are necessary for thorough preliminary investigation. The methods used by the preliminary investigating officer have a direct impact on the amount and accuracy of the information obtained throughout the investigation.

C. After securing the scene and attending to any victims and injured persons, the preliminary investigating officer should:

1. Determine what crime or incident has occurred.

2. Determine the location of the suspect(s).

3. Detain or arrest the suspect(s) if still present at the scene.

4. Identify the suspect(s).

5. Broadcast updated description of the incident, suspect(s) and/or vehicle(s), as applicable.

6. Verify the identity of the witness(es) and obtain current contact information.

7. Separate witnesses and instruct them to avoid discussing details of the incident with other witnesses.

8. Canvas the area for other witnesses.

D. Eyewitnesses:

1. Information obtained from the witness(es) can corroborate other evidence (e.g., physical evidence, accounts provided by other witnesses) in the investigation. Therefore, it is important that this information be accurately documented in writing.

2. The manner in which the preliminary investigating officer obtains information from a witness has a direct impact on the amount and accuracy of that information.

3. When interviewing a witness, the preliminary investigating officer should:

a. Inquire about the witness' condition.

- b. Establish a rapport with the witness.
- c. Use open-ended questions (e.g., “What can you tell me about the car?”); augment with closed-ended questions (e.g., “What color was the car?”). Avoid leading questions (e.g., “Was the car red?”).
- d. Clarify the information received with the witness.
- e. Whenever possible, have the witness write a written statement and sign it or tape record the statement with the witness’s consent.
- f. Document the information obtained from the witness, including the witness’ identity, in a written report.
- g. Encourage the witness to contact investigators with any further information.

V. MUG BOOKS AND COMPOSITES

“Mug” books must be objectively compiled to yield investigative leads that will be admissible in court.

- A. In selecting photos to be preserved in a “mug” book, the preparer should:
  - 1. Group photos by format (e.g., color or black and white; Polaroid, 35mm, or digital; video) to ensure that no photo unduly stands out.
  - 2. Select photos of individuals that are uniform with regard to general physical characteristics (e.g., race, age, sex).
  - 3. Consider grouping photos by specific crime (e.g., sexual assault, gang activity).
  - 4. Ensure that positive identifying information exists for all individuals portrayed.
  - 5. Ensure that photos are reasonably contemporary.
  - 6. Ensure that only one photo of each individual is in the “mug” book.
  - 7. Ensure photographs are free of any identifying information.

**NOTE:** “Mug” books, collections of photographs of previously arrested persons, may be used in cases in which a suspect has not yet been determined and other reliable sources have been exhausted. This technique may provide investigative leads, but results should be evaluated with caution.

- B. Developing and Using Composite Images:

1. The use of composite images can yield investigative leads in cases in which no suspect has been determined. Use of these procedures can facilitate obtaining a description from the witness that will enable the development of a reasonable likeness of the suspect.
2. The person preparing the composite should:
  - a. Assess the ability of the witness to provide a description of the suspect.
  - b. Select the procedure to be used from those available (e.g., identikit-type or computer-generated images).
  - c. Unless part of the procedure, avoid showing the witness any photos immediately prior to development of the composite.
  - d. Select an environment for conducting the procedure that minimizes distractions.
  - e. Conduct the procedures with each witness separately.
  - f. Determine with the witness whether the composite is a reasonable representation of the suspect.

C. Instructing the Witness:

1. Providing instructions to the witness can improve his/her comfort level and can result in information that may assist the investigation.
2. Instructions to the witness prior to conducting the procedure can facilitate the witness' recollection of the suspect.
3. The investigator/person conducting the "mug" book procedure should:
  - a. Instruct each witness individually with at least one other officer present.
  - b. Describe the "mug" book to the witness only as a "collection of photographs."
  - c. Instruct the witness that the person who committed the crime may or may not be present in the "mug" book.
  - d. Consider suggesting to the witness to think back to the event and his/her frame of mind at the time.
  - e. Instruct the witness to select a photograph if he/she can and to state how he/she knows the person if he/she can.
  - f. Assure the witness that regardless of whether he/she makes identification, the police will continue to investigate the case.

- g. Instruct the witness that the procedure requires the investigator to determine their level of confidence by noting any hesitation, the time needed to identify a suspect, if included, any physical and/or emotional expressions, the tone or deflection in their voice, and any comments that may be made.
- 4. The investigator/person conducting the composite procedure should:
  - a. Instruct each witness individually with at least one other officer present.
  - b. Explain the type of composite technique to be used.
  - c. Explain to the witness how the composite will be used in the investigation.
  - d. Instruct the witness to think back to the event and his/her frame of mind at the time.
- 5. The investigator/person conducting the composite procedure is prohibited from providing feedback that might influence the witness.

D. Documenting the “Mug” Book/Composites:

- 1. Documentation of the procedure and its outcome improves the strength and credibility of the results obtained from the witness and can be an important factor in the investigation and any subsequent court proceedings.
- 2. The investigator/person conducting the procedure should:
  - a. Document the procedure employed (e.g., identikit-type, “mug” book or computer-generated image) in writing.
  - b. Document the results of the procedure in writing, including the witness’ own words regarding how certain he/she is of any identification.
  - c. Document items used and preserve composites generated.

VI. INTERVIEWING THE WITNESS BY THE FOLLOW-UP INVESTIGATOR

- A. Pre-interview preparation will enable the investigator to elicit a greater amount of accurate information during the interview, which may be crucial to the investigation.
  - 1. Prior to conducting the interview, the investigator should:
    - a. Review available information.
    - b. Plan to conduct the interview as soon as the witness is physically and emotionally capable.

- c. Select an environment that minimizes distractions while maintaining the comfort level of the witness.
- d. Ensure interview room is available.
- e. Separate the witnesses.

B. Initial (Pre-Interview) Contact with the Witness:

- 1. Establishing a cooperative relationship with the witness likely will result in an interview that yields a greater amount of accurate information. On meeting with the witness but prior to beginning the interview, the investigator should:
- 2. Develop rapport with the witness.
- 3. Inquire about the nature of the witness' prior law enforcement contact related to the incident.
- 4. Volunteer no specific information about the suspect or case.

C. Conducting the Interview:

- 1. Information elicited from the witness during the interview may provide investigative leads and other essential facts. The above interview procedures will enable the witness to provide the most accurate, complete description of the event and encourage the witness to report later recollections. Witnesses commonly recall additional information after the interview that may be critical to the investigation.
- 2. During the interview, the investigator should:
  - a. Encourage the witness to volunteer information without prompting.
  - b. Encourage the witness to report all details even if they seem trivial.
  - c. Ask open-ended questions (e.g., "What can you tell me about the car?"); augment with closed-ended questions (e.g., "What color was the car?").
  - d. Avoid leading questions (e.g., "Was the car red?").
  - e. Caution the witness not to guess.
  - f. Ask the witness to mentally recreate the circumstances of the event (e.g., "Think about your feelings at the time.").
  - g. Encourage non-verbal communications (e.g., drawings, gestures, objects).

- h. Avoid interrupting the witness.
- i. Encourage the witness to contact investigators when additional information is recalled.
- j. Instruct the witness to avoid discussing details of the incident with other potential witnesses.
- k. Encourage the witness to avoid contact with the media or exposure to media accounts concerning the incident.
- l. Thank the witness for his/her cooperation.

D. Recording Witness Recollections:

- 1. Complete and accurate documentation of the witness' statement is essential to the integrity and success of the investigation and any subsequent court proceedings.
- 2. During or as soon as reasonably possible after the interview, the investigator should:
  - a. Document the witness statements. Whenever possible a tape-recorded or written statement from the witness shall be obtained.
  - b. Review written documentation or tape-recorded statements; ask the witness if there is anything he/she wishes to change, add or emphasize.

E. Assessing the Accuracy of Individual Elements of a Witness' Statement:

- 1. Point-by-point consideration of the accuracy of each element of a witness' statement can assist in focusing the investigation. This technique avoids the common misconceptions that the accuracy of an individual element of a witness' description predicts the accuracy of another element.
- 2. After conducting the interview, the investigator should:
  - a. Consider each individual component of the witness' statement separately.
  - b. Review each element of the witness' statement in the context of the entire statement. Look for inconsistencies within the statement.
  - c. Review each element of the statement in the context of evidence known to the investigator from other sources (e.g., other witnesses' statement, physical evidence).

F. Maintaining Contact with the Witness:

1. Re-establishing contact and rapport with the witness often leads to recovery of additional information. Maintaining an open communication channel with the witness throughout the investigation is critical.
2. During post-interview, follow-up contact with the witness, the investigator should:
  - a. Re-establish rapport with the witness.
  - b. Ask the witness if he/she has recalled any additional information.
  - c. Follow interviewing and documentation procedures previously mentioned in this General Order.
  - d. Provide no information from other sources.

## VII. FIELD IDENTIFICATION PROCEDURES (SHOW-UPS)

The use of a show-up can provide investigative information at an early stage, but the inherent suggestiveness of a show-up requires careful use of procedural safeguards.

An officer may conduct a “show-up” between a witness and a suspect whenever a potential suspect is located and detained within a reasonable length of time, in proximity to the location of the crime, and fits the description of the perpetrator given by the witness.

### A. Instructing the witness(es) prior to conducting a show-up

Instructions provided to the witness prior to a show-up will likely improve the accuracy and reliability of any identification obtained from the show-up and can facilitate the elimination of innocent parties from the investigation. Prior to conducting a show-up, the officer should:

1. Instruct the witness that he/she will be asked to look at a subject or several subjects.
2. Instruct the witness that it is just as important to clear innocent persons from suspicion as to identify the guilty party(ies).
3. Instruct the witness that individuals observed may not appear exactly as they did at the time of the incident.
4. Instruct the witness that the person who committed the crime may or may not be present.
5. Assure the witness that regardless of whether identification is made, the police will continue to investigate the incident.
6. Instruct the witness that the procedure requires the officer to ask the witness to state, in their own words, how certain they are of any identification.



B. Conducting a show-up:

Preparing a complete and accurate record of the outcome of the show-up improves the strength and credibility of the identification and non-identification results obtained from the witness and can be a critical document in the investigation and any subsequent court proceedings. When conducting a show-up, the investigator/officer should:

1. Document the time and location of the show-up.
2. Document the names of all officers who were involved in the show-up and what their specific roles were.
3. Determine and document, prior to the show-up, a description of the suspect.
4. Transport the witness to the location of the detained suspect to limit the legal impact of the suspect's detention.
5. When multiple witnesses are involved:
  - a. Separate witnesses and instruct them to avoid discussing details of the incident with other witnesses.
  - b. If a positive identification is obtained from one witness, consider using other identification procedures for remaining witnesses.
6. Record both identification and non-identification results in writing and determine their level of confidence by noting any hesitation, the time needed to identify a suspect, if present, any physical and/or emotional expressions, the tone or deflection in their voice, and any comments that may be made.
7. Officers are prohibited from providing feedback to witnesses during presentation of the line-up.
8. The investigating officer is obligated to collect any notes taken by other officers on the scene of a show-up and is to maintain them as part of the case file.

VIII. PROCEDURES FOR EYEWITNESS IDENTIFICATION OF SUSPECTS (LINE-UPS)

NOTE: The Rockville City Police Department does not conduct live line-ups

A. Composing Photo Lineups:

1. In a photo line-up the suspect should not unduly stand out. An identification obtained through a photo lineup using the following procedures should result in a strong evidentiary value.

2. In composing a photo lineup, the investigator should:
  - a. Include only one suspect in each identification procedure.
  - b. Select fillers who generally fit the witness' description of the suspect. When there is a limited/inadequate description of the suspect provided by the witness, or when the description of the suspect differs significantly from the appearance of the suspect, fillers should resemble the suspect in significant features.
  - c. If multiple photos of the suspect are reasonably available to the investigator, select a photo that resembles the suspect description or appearance at the time of the incident.
  - d. Include a minimum of five fillers (non-suspects) per identification procedure.
  - e. Avoid using fillers, such as a twin, who so closely resemble the suspect that a person familiar with the suspect might find it difficult to distinguish the suspect from the fillers.
  - f. Create a consistent appearance between the suspect and fillers.
  - g. Consider placing suspects in different positions in each lineup, both across cases and with multiple witnesses in the same case. Position the suspect randomly in the lineup.
  - h. When showing a new suspect, avoid reusing fillers in lineups shown to the same witness.
  - i. Ensure that no writings or information concerning previous arrest(s) will be visible to the witness.
  - j. View the spread, once completed, to ensure that the suspect does not unduly stand out.
  - k. Preserve the presentation order of the photo lineup. In addition, the photos themselves should be preserved in their original condition.
  - l. When multiple witnesses are involved, keep witnesses separated and instruct them to avoid discussing details of the incident with other witnesses. Present the photo line-up to only one witness at a time.
  - m. Always present the photo array in person.

B. Instructing the Witness Prior to Viewing a Photo Lineup:

1. Instructions provided to the witness prior to presentation of a lineup will likely improve the accuracy and reliability of any identification obtained from the witness and can facilitate the elimination of innocent parties from the investigation.
2. Prior to presenting a photo lineup, the investigator shall:

- a. Consider audio or video recording the presentation of a line-up to any witnesses.
- b. Utilize RCPD Form #6, Photographic Array Information Sheet, whenever possible to explain the procedures and document the results. This will include:
  - 1. Instructing the witness that he/she will be asked to look at a subject or several subjects.
  - 2. Instructing the witness that it is just as important to clear innocent persons from suspicion as to identify the guilty party(ies).
  - 3. Instructing the witness that the individuals observed may not appear exactly as they did at the time of the incident.
  - 4. Instructing the witness that the person who committed the crime may or may not be present.
  - 5. Assuring the witness that regardless of whether identification is made, the police will continue to investigate the incident.
  - 6. Instructing the witness that the procedure requires the investigator to ask the witness to state, in his/her own words, how certain he/she is of any identification.

C. Conducting the Identification Procedure:

- 1. The manner in which an identification procedure is conducted can affect the reliability, fairness and objectivity of the above procedures and can minimize the effect of external influences on a witness' memory. Officers are prohibited from providing feedback to witnesses during presentation of the line-up.
- 2. When conducting simultaneous photo lineups, the investigator should:
  - a. Provide viewing instructions to the witness as outlined in: "Instructing the Witness Prior to Viewing a Lineup" of this policy.
  - b. Confirm that the witness understands the nature of the lineup procedure.
  - c. Avoid saying anything to the witness that may influence the witness' selection.
  - d. If identification is made, avoid reporting to the witness any information regarding the individual he/she has selected prior to obtaining the witness' statement of certainty.
  - e. Record any identification results and witness' statement of certainty as outlined in the "Recording Identification Results" of this policy.
  - f. Document in writing the photo lineup procedure, including:
    - (1) Identification information and source of all photos used.

- (2) Names of all persons present at the photo lineup
      - (3) Date and time of the identification procedure
    - g. Instruct the witness not to discuss the identification procedure or its results with other witnesses involved in the case and discourage contact with the media.
  - 3. When presenting a sequential photo lineup, the investigator should:
    - a. Provide viewing instructions to the witness as outlined in: Instructing the Witness Prior to Viewing a Lineup” of this policy.
    - b. Provide the following additional viewing instruction to the witness:
      - (1) Individual photographs will be viewed one at a time.
      - (2) The photos are in random order.
      - (3) Take as much time as needed in making a decision about each photo before moving to the next one.
      - (4) All photos are shown, even if identification is made.
    - c. Confirm that the witness understands the nature of the sequential procedure.
    - d. Present each photo to the witness separately, in a previously determined order, removing those previously shown.
    - e. If identification is made or not made, avoid reporting to the witness any information regarding the individual he/she has selected.
    - f. Record any identification results and witness’ statement of certainty as outlined in the “Recording Identification Results” of this policy.
    - g. Document in writing the photo lineup procedure, including:
      - (1) Identification information and source of all photos used.
      - (2) Names of all persons present at the photo lineup
      - (3) Date and time of the identification procedure
    - h. Instruct the witness not to discuss the identification procedure or its results with other witnesses involved in the case and discourage contact with the media.
- D. Recording Identification Results: (42.2.11g)
- 1. Preparing a complete and accurate record of the outcome of the identification procedure improves the strength and credibility of the identification or non-identification results obtained from the witness. This record can be critical documentation in the investigation and any subsequent court proceedings.

2. When conducting an identification procedure, the investigator should:
  - a. Record both identification and non-identification results in writing, including the witness' own words regarding how sure he/she is.
  - b. Ensure results are signed and dated by the witness.
  - c. Ensure that no materials indicating previous identification results are visible to the witness.
  - d. Ensure that the witness does not write on or mark any materials that will be used in other identification procedures.